

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARRAY TECHNOLOGIES, INC.,

Plaintiff,

v.

COLIN MITCHELL, an individual;
NEXTRACKER, a Delaware corporation;
MARCO GARCIA, an individual;
DANIEL S. SHUGAR, an individual;
SCOTT GRAYBEAL, an individual; and
FLEXTRONICS INTERNATIONAL U.S.A.,
INC., a California corporation.

Civil Action No. 1:17-cv-00087-JCH-LF

Defendants.

ORDER RE ARRAY TECHNOLOGIES, INC.'S
MOTION TO COMPEL (DOC. 368)

THIS MATTER comes before the Court on plaintiff Array Technologies, Inc.'s ("Array") motion to compel defendants Colin Mitchell, NEXTracker, Inc., Marco Garcia, Daniel Shugar, Scott Graybeal, and Flextronics International U.S.A., Inc. (collectively "Defendants") to produce documents relating to the Consent Order (Doc. 368). The Court held a telephonic hearing on Array's motion to compel on May 16, 2019. Having read the submissions of the parties and heard counsels' arguments, the Court finds that Defendants intentionally disclosed attorney-client communications in their Notice of Activity (Docs. 260, 262) for strategic reasons, and, therefore, the Court concludes that Defendants engaged in subject matter waiver of attorney-client communications relating to the Consent Order. For the reasons stated at the hearing, the Court will GRANT in part and DENY in part Array's motion to compel.


IT IS THEREFORE ORDERED that Defendants produce documents and make witnesses available for depositions as follows:

1. No later than June 21, 2019, Defendants shall produce all documents reflecting attorney-client communications relating to the Consent Order, including for example emails, notes, minutes, and draft declarations, in accordance with the following:
 - a. Subject matter is limited to attorney-client communications that reflect notice, knowledge, implementation, efforts to comply, meaning, effect, and Defendants' understanding of the Consent Order, and documents that show compliance or noncompliance with the Consent Order; involving both:
 - i. Attorney-client communications with any of the Defendants, NEXTracker and/or Flex employees; and
 - ii. Temporally limited to communications taking place on or before July 12, 2017, and documents generated after July 12, 2017 that reflect or recollect the content of communications taking place on or before July 12, 2017.
2. Defendants shall make witnesses available for additional depositions within 30 days of Defendants' production of the documents in connection with this Order, in accordance with the following:
 - a. Scope of questioning is limited to the Consent Order and includes attorney-client documents, information, and communications that reflect the subject matter set forth in Section 1 of this Order;
 - b. Depositions for any witnesses who were instructed not to answer a deposition question related to the Consent Order due to attorney-client privilege, including

Colin Mitchell, Marco Garcia, Daniel Shugar, NEXTracker, Scott Graybeal , and
Flex; and

- c. Each additional deposition will be limited to two hours.

IT IS SO ORDERED.



Laura Fashing
United States Magistrate Judge